

E-999/CI-93-583 ORDER ESTABLISHING PROCEDURE FOR ESTABLISHING  
INTERIM ENVIRONMENTAL COST VALUES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
Tom Burton  
Marshall Johnson  
Cynthia A. Kitlinski  
Dee Knaak

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the  
Quantification of Environmental  
Costs Pursuant to Laws of  
Minnesota 1993, Chapter 356,  
Section 3

ISSUE DATE: August 17, 1993

DOCKET NO. E-999/CI-93-583

ORDER ESTABLISHING PROCEDURE FOR  
ESTABLISHING INTERIM  
ENVIRONMENTAL COST VALUES

**PROCEDURAL HISTORY**

In May of this year the Legislature enacted Laws of Minnesota 1993, Chapter 356, which contains a number of provisions related to renewable energy and resource planning. These provisions include a requirement that the Commission "quantify and establish a range of environmental costs associated with each method of electricity generation." The law further requires each utility to "use [these values], in conjunction with other external factors, . . . when evaluating resource options in all proceedings before the Commission." The legislation, which became effective August 1, 1993, sets March 1, 1994 as the deadline to establish "interim environmental cost values." The interim values would expire when "final" values are adopted.

On July 19, 1993, the Commission issued a notice of its intent to meet to consider various procedural options for establishing environmental cost values. The Commission met on August 5, 1993 to consider this matter.

**FINDINGS AND CONCLUSIONS**

The portion of the law relevant to this proceeding provides as follows:

Subd. 3. [ENVIRONMENTAL COSTS.] (a) The commission shall, to the extent practicable, quantify and establish a range of environmental costs associated with each method of electricity generation. A utility shall use the values established by the commission in conjunction with other external factors, including socioeconomic costs, when evaluating and selecting resource options in all proceedings before the commission, including resource plan and certificate of need proceedings.

(b) The commission shall establish interim environmental cost values associated with each method of electricity generation by March 1, 1994. These values expire on the date the commission establishes environmental cost values under paragraph (a).

This provision replaces previous legislation which required utilities to include the value of avoided environmental costs in their payments to Qualifying Facilities (QFs). The new legislation directs utilities and the Commission to use environmental cost values as a factor in the evaluation and selection of resources, not as a component of avoided cost payments to QFs.<sup>1</sup> Consideration of environmental costs in this fashion will enable utility planners to compare the cost of resource alternatives more accurately, taking into account costs not currently reflected in the cost of generating electricity. This should result in a more environmentally benign combination of resources to meet Minnesota's future electric energy needs.

The legislation requires the Commission to establish "interim environmental cost values" by March 1, 1994. The reference to "interim values" appears to acknowledge that the formal proceedings often used to implement requirements similar to the one at issue here would likely take the Commission well beyond the March 1, 1994 deadline.<sup>2</sup> The Legislature clearly recognized in granting authority for interim values that the Commission may need to employ less formal procedures than it would otherwise use

---

<sup>1</sup> Another section of the new law (section 1) addresses avoided cost payments to QFs. That section requires that renewable QFs be paid an avoided cost based on the cost of the utility's least-cost renewable facility, or the bid of a competing facility. This requirement may require some amendments to the Commission's existing rules on purchased power.

<sup>2</sup> Having values established by March 1, 1994 will ensure their availability for use in the 1994 resource plan filings scheduled for July 1 of that year. Both Otter Tail Power Company and Minnesota Power are scheduled to file resource plans in 1994. Some cooperative and municipal utilities may also file that year under the new law which requires some of these previously exempt utilities to file resource plans with the Commission.

to ensure that the Commission meets the statutory deadline. Consistent with the express intent of the Legislature, the Commission considers its first order of business to be the establishment of interim values within the statutory time frame.

The Commission can use any of three procedural options to establish environmental cost values: (1) a rulemaking; (2) a contested generic proceeding; or (3) an expedited generic proceeding. Each type of proceeding has its own set of advantages and disadvantages. The Commission, however, considers the length of each process to be the most critical factor. A careful examination of the legal requirements connected with these proceedings, as well as past experience, reveals that neither a rulemaking nor a contested case proceeding would allow the Commission to meet the statutory deadline for interim values.

Rulemakings are governed by the administrative procedure act (APA), codified in Minn. Stat. ch. 14, and by Minnesota Rules, parts 1400.0200 to 1400.1200. A rulemaking in this matter would invariably involve the use of an advisory task force and probably require a hearing before an administrative law judge. Typically, a controversial rulemaking of this kind takes 12 to 18 months to complete. Given the controversial nature of this issue, it is highly unlikely that the Commission would be able to adopt rules by March 1, 1994.

A contested generic proceeding would be an evidentiary process conducted by an administrative law judge under the APA, and Minnesota Rules, parts 1400.5100 to 1400.8400. All electric utilities required to consider environmental costs under the statute would be made parties to the proceeding. Other interested parties would also be encouraged and permitted to participate. The administrative procedure act and applicable rules establish an extensive set of procedures that, in light of past experience, would carry the proceeding in this matter well beyond the statutory deadline.

Unlike a rulemaking or contested case, an expedited generic proceeding would enable the Commission to implement the interim environmental cost values in a timely fashion. An expedited proceeding would be conducted as a notice and comment process in which all interested parties would have the opportunity to provide written and oral comment to the Commission. As with a contested case, all electric utilities required to use the environmental cost values established by the Commission would be parties to the proceeding. Other interested parties would be encouraged to participate as well. This process should last no more than 4 to 6 months, ensuring that environmental cost values are established by March 1, 1994. In view of the statutory deadline and the importance of moving ahead expeditiously, the Commission will order that an expedited generic proceeding commence immediately.

The Commission expects all interested parties to work together in an attempt to reach agreement on an appropriate range of environmental costs. However, any collaborative effort should not unduly delay the process. The Commission will require all those interested in participating in this process to notify the Commission in writing of their interest within 20 days. The service list will include all electric utilities required to file resource plans under the new law, and others who respond within this 20 day period. Participants in the process must submit written comments, including any agreements reached among the parties, no later than 60 days after the deadline for filing notice of intent to participate. Parties will have 30 days after the end of the written comment period to file reply comments. Comments and reply comments must be served on all parties listed on the service list provided by the Commission.

The Commission expects these written comments to include proposed environmental cost values as required by Laws of Minnesota 1993, Chapter 356, Section 3. The comments should also, to the extent practicable, address the following issues:

1. How should the Commission interpret the term "method," which the statute uses in requiring quantification of "each method of electricity generation?" Does this term refer to fuel type, generation technology or some other category?
2. What methods of electric generation as defined in response to question #1 should be considered?
3. How should environmental costs be identified? For example, should individual environmental costs, such as a ton of sulfur dioxide, be valued and then applied to generation types based on the emission levels of each generation method?
4. What types of environmental impacts should be valued (e.g., air emissions, water contaminants, land use, other)?
5. Should environmental cost values reflect the full cycle of electric generation, including both upstream and downstream costs?
6. What methodology should be used to quantify environmental costs (e.g., damage costs, control costs, willingness to pay, other)?
7. Should environmental cost values be geographically sensitive? For example, should these costs vary depending on the local, regional or global impact of generation? Does the importance of geography vary with the specific environmental externality at issue? How should the appropriate geographical area be determined?

8. How should the Commission determine the upper and lower limits on the range of environmental costs required by the statute?

**ORDER**

1. All persons interested in participating in the proceeding to establish environmental cost values pursuant to Laws of Minnesota 1993, Chapter 356, Section 3 shall, within 20 days, give the Commission written notice of their intent to participate.
2. Written comments in this matter must be filed with the Commission no later than 80 days from the date of this Order. Reply comments must be filed with the Commission within 110 days of the date of this Order.
3. Written comments filed with the Commission must be served on all persons on the service list provided by the Commission in this matter.
4. The written comments filed by utilities must include proposed environmental cost values as required by Laws of Minnesota 1993, Chapter 356, Section 3. These written comments must, to the extent practicable, also address the questions posed in the text of this Order. Others submitting comments are encouraged to do the same.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)